

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,
NAGPUR**

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI ARUN KHODPIA, AM

ITA No. 01/NAG/2017 to 04/NAG/2017

Assessment Years: 2004-05 , 2005-06, 2006-07 & 2009-10

Shri Vivek M. Deshpande 67-A, Madhav, Shivaji Nagar Nagpur – 440 010	Vs.	The DCIT Circle 1(3) Nagpur -440 001
PAN No.: AARPD 4769N		
Appellant		Respondent

Assessee by: Shri S.C. Thakar (Adv.)
Shri Rachit Thakar (Adv.)
Revenue by : Shri Piyush Kolhe (CIT-DR)

Date of Hearing: 21/04/2022
Date of Pronouncement: 28/04/2022

ORDER

PER: SANDEEP GOSAIN, J.M.

These four appeals have been filed by the assessee against consolidated order of the Id. CIT(A)-3, Nagpur dated 27-10-2016 for the assessment years 2004-05, 2005-06, 2006-07 and 2009-10 respectively

2. In Assessee's four Appeals for A.Y.2004-05, 2005-06, 2006-07 and 2009-10 some grounds (i.e. legal grounds) are common for all the year while other grounds in different years related to the different additions as unexplained investments. For A.Y. 2004-05 and 2005-06 respective additions of Rs.1,93,000/- and Rs.1,35,000/- relate to unexplained investment in construction of house property while addition of

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Rs.8,65,575/- for A.Y.2006-07 and addition of Rs.17,66,000/- for
A.Y.2009-10 related to the addition of unexplained investment in land.

3. For the sake of convenience and completeness, we have heard together and decided all these four appeals by this common orders against the consolidated order by Id CIT(A) for those years.

4. Now we take up Assessee's Appeals for A.Ys.2004-05, 2005-06, 2006-07 and 2009-10 for adjudication.

5. For A.Y.2004-05 in Assessee's Appeal, the grounds taken by Assessee are as under :-

"1] Learned C.I.T.(A) erred in holding that issue of notice U/s.143(2) within the prescribed time is not mandatory in search proceedings U/s.153-A and consequently non-issue of 143(2) notice in time would not render the assessment U/s.153-A as a nullity or without jurisdiction. He should have cancelled the assessment as without jurisdiction.

2] Learned C.I.T(A) erred in confirming addition of Rs.1,93,000/- paid to architect Shri Sanjay Gokhale forming part of the cost of construction of residential house as unexplained investment. The total cost of construction including fees to architect etc. estimated by D.V.O. was Rs.57,44,412/- while the assessee had explained the source of expenditure towards cost of construction at Rs.64,33,345/-. Thus taking overall broad view of the facts the addition of Rs.1,93,000/- was totally unjustified. C.I.T.(A) erred in confirming the same on the mere ground that specific payment was not proved.

3] Assessee craves leave to urge additional grounds at the time of hearing as may be necessary."

6. In ground No.1 the Assessee has challenged the validity of notice u/s.143(2) as barred by time and hence the consequent assessment

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur made u/s.153-A are without jurisdiction. Relevant facts thereto are that there was a search action u/s.132(1) against M/s. Spacewood Furnishers (P) Ltd. and its directors viz. Vivek M Deshpande (the Assessee) and another director Shri Kirit Joshi on **19.06.2009**. In pursuance thereto A.O. issued notice u/s.153-A on the Assessee on 16.02.2010 calling upon him to file the return. Assessee by his letter **dt.18.03.2010** requested A.O. to treat the original return for A.Y.2004-05 filed on 31.03.2005 as filed in pursuance of notice u/s.153-A. Thus the return for A.Y.2004-05 u/s.153-A was filed on 18.03.2010. Notice u/s.143(2) is required to be issued within six months from the end of the financial year in which the return was filed. Since the return was filed on 18.03.2010, the financial year of which ended on 31.03.2010 and hence the notice u/s.143(2) was required to be issued within six months from 01.04.2010 i.e. **on or before 30.09.2010**. However the A.O. issued notice u/s.143(2) on 24.08.2011 and notice u/s.142(1) with questionnaire on 29.06.2011 both of which were much beyond the period of limitation of six months and hence it is claimed by the Assessee that the consequent assessment for the year in question dt.09.07.2015 is without jurisdiction. After hearing both the parties and

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 perusing the materials available on record, **we dismiss ground No.1
 taken by the Assessee in this Appeal for A.Y.2004-05.**

7. Next ground is against the addition of Rs.1,93,000/- paid to civil contractor Shri Sanjay Gokhle (in grounds wrongly stated as Architect) forming part of cost of house construction as unexplained investment. Similar addition of Rs.1,35,000/- is made in A.Y.2005-06 one more addition of Rs.4,71,537/- was made by A.O. in A.Y.2005-06 which has been deleted by Id. CIT(A). Relevant facts are that during financial year 2002-03 to 2004-05, Assessee constructed residential house on plot No.67-A, Shivaji Nagar, Nagpur. A.O. referred the matter to valuation officer for estimating the cost of construction. DVO estimated the cost of construction at Rs.57,44,412/- and yearwise bifurcation thereof is as under :-

Financial Year	Yearwise cost estimated V.O.	Yearwise available fund for construction as assumed by V.O.	Difference as worked out by V.O.
2002-03	59,132/-	50,000/-	9,132/-
2003-04	13,00,873/-	11,08,403/-	1,92,470/-
2004-05	31,94,210/-	27,22,673/-	<u>4,71,537/-</u>
2005-06	11,90,197/-	10,08,066/-	1,82,131/-
	57,44,412/-	48,89,142/-	8,55,270/-

8. Valuation Officer omitted to take into consideration the available fund for construction of Rs.15,44,203/- taken as housing loan from State Bank of India in F.Y.2003-04. Thus the available fund for construction and spent on construction was admittedly Rs.64,33,345/- (48,89,142/-+ 15,44,203/-). There is no dispute to the said fact.

9. During the search at residential premises of Assessee a loose paper was found and seized being annexure B to pg.5 which showed cash payment to civil contractor Sanjay Gokhale as under :-

(for A.Y.2004-05).

14.08.2003	Rs. 43,000/-
21.08.2003	Rs. 43,000/-
08.10.2003	Rs. 80,000/-
29.02.2004	<u>Rs. 30,000/-</u>
	Rs.1,93,000/-

(for A.Y.2005-06)

24.04.2004	Rs. 50,000/-
28.04.2004	Rs. 50,000/-
05.05.2004	Rs. 50,000/-
07.08.2004	<u>Rs. 50,000/-</u>
	Rs.2,00,000/-

10. The A.O. called upon the Assessee as to why the addition of Rs.1,93,000/- for A.Y.2004-05 and of Rs.2,00,000/- for A.Y.2005-06 be not made. Similarly A.O. also called upon the Assessee that as per valuation report there was a deficit of Rs.4,71,537/- in A.Y.2005-06 between the cost estimated by V.O. for that year and fund available as

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur per valuation report. Assessee submitted that the yearwise bifurcation of cost is merely an estimate and is not sacrosanct. The overall cost estimated by V.O. was Rs.57,44,412/- while the Assessee explained the source of investment in cost of construction at Rs.64,33,345/-. A.O. cursorily dismissed the explanation of the Assessee as not satisfactory and added Rs.1,93,000/- as unexplained investment in A.Y.2004-05. In respect of payment of Rs.2,00,000/- he accepted the source of Rs.50,000/- dt.07.08.2004 as it was directly linked with the withdrawals from bank amounting to Rs.25,000/- on 13.07.2004 and Rs.20,000/- twice on 24.07.2004. Thus he added Rs.1,50,000/- and further added Rs.4,71,537/- being alleged difference as worked out by Valuation Officer for A.Y.2005-06. Thus the A.O. added Rs.1,50,000/- and Rs.4,71,537/- in A.Y.2005-06 as unexplained investment in house construction.

11. Against the said addition for A.Y.2004-05 and 2005-06 Assessee filed appeal before Id. CIT(A). The Id. CIT(A) for A.Y.2004-05 in para 23 of his order held that the Assessee's argument that the expenditure yearwise stated by Assessee is more than the valuation report of DVO does not have any merit **in absence of explanation for the specific cash payment noted in the seized document** and therefore he

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur confirmed the addition of Rs.1,93,000/-. For A.Y.2005-06 out of addition of Rs.1,50,000/-, Id. CIT(A) gave relief of Rs.15,000/- as the total withdrawal from bank was Rs.65,000/- and hence he held Rs.65,000/- as explained as against Rs.50,000/- treated as explained by A.O. and accordingly he gave relief of Rs.15,000/- and confirmed the addition of Rs.1,35,000/- on the same ground viz. there was no explanation for **specific payments** made to civil contractor. In respect of addition of Rs.4,71,537/- Id. CIT(A) discussed the issue in para 31 and 32 of his order and for the reasons stated in para 32 he deleted the addition of Rs.4,71,537/-. In para 32 he stated as under:-

"32. The Assessee's argument and the A.O.'s observations are carefully considered. There is merit in the Assessee's argument that the year wise working of the cost of construction by the DVO is not sacrosanct. The cost of construction as estimated by the DVO is less than actual cost of construction declared by the Assessee. The Assessee has declared total cost of construction at Rs.64,34,345/- whereas the DVO has estimated the same at Rs.57,44,412/-. Considering the same, the A.O.'s argument that during the previous year relevant to assessment year 2005-06, the cost of construction to the extent of Rs.4,71,537/- was unexplained only on the basis of year wise split of cost of construction by the DVO is not justified."

12. Learned A.R. submitted in his written submission filed before us that for the same reasons as stated by Id. CIT(A) for deleting the addition of Rs.4,71,537/- he should have deleted the addition of Rs.1,93,000/- for A.Y.2004-05 and Rs.1,35,000/- for A.Y.2005-06 as the payment to civil contractor was a part of total cost of construction. V.O. had estimated cost of construction at Rs.57,44,412/-, while the Assessee

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur had shown cost at Rs.64,33,345/- and had proved the source thereof. It was submitted that there cannot be a specific source of each of the specific item of expenditure. The question was about the total cost of construction and the Assessee had admittedly proved the same. Learned D.R. relied on the orders of Id. CIT(A) & AO in this regard.

13. We have considered the rival submissions and have perused the record. It is an admitted position on record that the total cost of construction taken by V.O. is Rs.57,44,345/- and the same is accepted by the A.O. also. The payment of Rs.1,93,000/- and Rs.1,35,000/- to civil contractor is admittedly a part of cost of construction which is estimated by A.O. at Rs.57,44,345/- as determined by Valuation Officer. Admittedly the Assessee has proved the source of construction at Rs.64,33,345/-. Ld CIT(A) has confirmed the addition of Rs.1,93,000/- and Rs.1,35,000/- merely on the ground that there is no direct or specific source to link it with the said payment to civil contractor. In such cases, it is impossible to link every expenses with some specific source. One has to take the overall view of the total cost of construction and the source to prove such overall total cost. This having been done, there is no scope for addition for some item of expenditure only on the ground that there is no specific explanation for those specific item of

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they are included in the total cost estimated by V.O. at Rs.57,44,345/-.

In fact the Id. CIT(A) himself while dealing with the addition of Rs.4,71,537/- has taken overall view that the cost of construction estimated by DVO is less than the actual cost of construction proved by the Assessee and hence the addition was not justified. Hon'ble Supreme Court in the case of Sreelekha Banerjee Vs. CIT reported in (1963) 49 ITR (SC) P.112 has held that the department cannot by merely rejecting unreasonably a good explanation convert the good proof into no proof.

In our view considering the totality of facts and the fact that the cost of construction declared and source thereof proved being more than the estimate of cost by valuation officer there is no justification for making or retaining the addition of Rs.1,93,000/- for A.Y.2004-05 and Rs.1,35,000/- for A.Y.2005-06. Accordingly we delete the said addition and accordingly the Appeal of the Assessee for **A.Y.2004-05 and A.Y.2005-06 are allowed.**

A.Y. 2006-07

14. In A.Y.2006-07 the learned A.O. made two additions, one of Rs.4,82,137/- as unexplained investment in house property and another of Rs.8,65,575/- being unexplained investment in purchase of two pieces of agricultural land.

15. Learned CIT(A) deleted the addition of Rs.4,82,137/- for the same reason for which he deleted the addition of Rs.4,71,537/- for A.Y.2005-06. Those deletion are final as there is no appeal by revenue against the same. Next addition made by A.O. is that of Rs.8,65,575/- which is confirmed by CIT(A). Against which the Assessee is in appeal before us. The brief facts are that the Assessee and another director Shri Kirit Joshi purchased two pieces of agricultural land on 06.07.2005 and 19.05.2005 for Rs.45,00,000/- and Rs.24,05,000/- respectively from Gajanan Bhojar and another. Total cost of purchase including stamp duty, registration etc. was Rs.72,22,800/-. It was stated that the said land was purchased for Spacewood Furnishers (P) Ltd. but since the company could not purchase agricultural land the same was purchased by Assessee and Shri Kirit Joshi, the directors of the company. Consideration to the extent of Rs.55,56,600/- was provided by M/s. Spacewood Furnishers (P) Ltd. and the balance of Rs.16,66,200/- was provided by Assessee and Shri Kirit Joshi out of their own sources, Shri Kirit Joshi had provided Rs.8,00,625/- and Assessee provided Rs.8,65,575/-. Shri Kirit Joshi explained the source of his contribution of Rs.8,00,625/- and the Revenue has accepted the same and hence there is no issue with regard to said contribution by Kirit Joshi. Assessee was called upon to prove the

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur source of Rs.8,65,575/-. He pointed out the same was out of his savings, withdrawals from time to time from his savings a/c. and savings of family members who are all income tax assessee. The A.O. was not satisfied with this general explanation and accordingly he added Rs.8,65,575/- to his total income as unexplained. Against said addition Assessee filed appeal before Id. CIT(A). According to Id. CIT(A) there were no sufficient withdrawals from bank to prove the source of entire amount of Rs.8,65,575/-. He was not satisfied with the explanation of the Assessee and hence he confirmed the addition of Rs.8,65,575/-. Before us the learned AR submitted that the said amount was provided from the family's savings over a period of time. All the family members viz. he himself, his wife and assessee's father are all income tax assessees. He is getting salary of Rs.2,00,000/- p.m. from Spacewood Furnishers (P) Ltd. till 2004-05 and Rs.4,00,000/- p.m. thereafter. His wife is an advocate and her income is about Rs.2.5 Lakh per year. His father was also income tax assessee. The A.O. and Id. CIT(A) has stated that there was no sufficient withdrawals from bank and hence have confirmed entire addition without considering overall financial position of family. The Id. DR relied on the orders of the lower authorities. We have perused the order of Id. CIT(A) and A.O. and

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur submission filed by Id. AR and have also heard the parties. In our view, though there is no specific or direct source to prove the said investment of Rs.8,65,575/- but looking to the family status, the fact that they are all income tax assessee, there are withdrawals from bank and their savings over a period of time etc., it cannot be said that the source of entire investment of Rs.8,65,575/- has remained unexplained. Hence the addition of entire amount of Rs.8,65,575/- is unjustified. Looking to the totality of facts and circumstances of the case, the addition of Rs.4,00,000/- out of the total addition of Rs.8,65,575/- will meet the ends of justice. Accordingly we restrict the addition of Rs.8,65,575/- to Rs.2,00,000/- and delete the balance addition of Rs.6,65,575/-. Accordingly appeal for A.Y.2006-07 is partly allowed.

A.Y. 2009-10

16. In this Appeal the Assessee has challenged the addition of Rs.17,66,000/- added by A.O. as unexplained investment in purchase of land being Khasra No.62/1 admeasuring 3.51 acres, Mouza : Wagdara, Tah.: Hingna, Dist.:Nagpur. Said addition is confirmed by CIT(A) and hence Assessee is in Appeal before us against the said addition.

17. Facts relating to the said addition are that during the search u/s.132(1) dt.19.06.2009 at the premises of M/s. Spacewood Furnishers (P) Ltd. and It's directors Kirit Joshi and Assessee a loose paper was

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found from the premises of the Assessee being page No.121 annexure

B-1 which reads as under :-

Sheet1

First Transaction

10,00,000	1,25,00,000
8,50,000	1,25,00,000
5,00,000	80,00,000
5,00,000	80,00,000
<u>28,50,000</u>	<u>4,10,00,000</u>

4,38,50,000	Total payment
<u>4,37,50,000</u>	Land issued
1,00,000	Balance Carried forward

Details of Land issued

No.	Area	@Rate	Amount
Kh. No.54	2 Acre	40,00,000	80,00,000
Kh No.62/1	3.51 Acre	35,00,000	1,22,85,000
Kh.No.56	4 Acre	35,00,000	1,40,00,000
Kh. No.60	1.49 Acre	38,00,000	94,62,000
			4,37,47,000
Say			4,37,50,000

Second Transaction

1,00,000
50,00,000
6,00,000,
75,00,000
<u>7,35,000</u>
1,39,35,000

Expenses :-

Part of 54 = 3.174 (2 + 1.174)	4,31,358
Kh. No.56	4,08,280
Kh. No.62/1	4,51,120
Part of 60	<u>2,58,841</u>
	15,49,599
To pay Stamp Duty etc. for Registry	15,49,600
For 12 Acre i.e. 2,80,425 sqft. NATP	70,10,625
Net Expenses	85,60,225
Balance with VAP	53,74,775
Hence 1.174 Acre NATP Land of Kh. No.54 additional from VAP	

Details :-

Kh. No.54 = 4.15 Acre
Plottable Area = 8883.09 sqmtr. i.e. 95617.58 sqft.
95617.58 @ 25 Rs. NATP charges = 29,90,440
Price of 4.15Acre land @ Rs.40 Lacs = 1,66,00,000
Total cost of NATP land of Kh.No.54 = 1,89,90,440
Therefore Rate of NATP land per Acre = 45,76,000
Cost of 1.174 Acre NATP land = 53,74,000

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Net Land of 13.174 Acre i.e. 305423.22 sqft. for Rs.5,69,50,000

i.e. Rs.43.23 per Acre of NATP land

i.e. Rs.186.48 per sqft.

Within 1 year 100% Rise is Rs.372 per sqft.

Current Market Rate of Rs.500/- per sqft.

i.e. Rs.43.23 per Acre of NATP land

i.e. Rs.186.48 per sq.ft.

Within 1 year 100% Rise is Rs.372/- per sqft.

Current Market Rate of Rs.500/- per sqft.

18. On the basis of said paper the AO stated that against Khasra No.62/1, 3.51 Acres, rate 35,00,000/- the amount is stated at Rs.1,22,85,000/-. This means that the said land was purchased for Rs.1,22,85,000/- while the sale deed in respect of said land dt.14.10.2008 (actually sale deed is **dated 17.10.2007**) mentions the consideration of Rs.1,05,19,000/-. This means that consideration to the extent of Rs.17,66,000/- (1,22,85,000/- - 1,05,19,000/-) is paid out of books and the source thereof remains unexplained.

19. Assessee explained that in the said paper a leading property broker Vivek Pathak has given some details and calculation in respect of proposed and ongoing negotiation and certain estimates and calculations and the same did not represent payments made against respective lands stated in the said paper. The A.O. was not satisfied with the explanation and accordingly he added Rs.17,66,000/- as unexplained investment in property. Against the said order, Assessee filed an Appeal before Id. CIT(A). A detailed written submission was filed before him. He

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur has discussed the issue on paras 39, 39.1 to 39.4. It was submitted before Id CIT(A) that the said paper did not refer to any final concluded transaction. It was in respect of discussion with a leading broker Vivek Pathak in respect of the proposed/ ongoing transaction of purchase of various lands stated therein. It depicted as to what would be the approximate cost of those land, what would be the approximate cost of conversion of land to N.A. use and other expenses and what would be the profit thereon etc. It was also pointed out that some of the land stated on the said loose paper is not purchased at all while a few of the land stated thereon were purchased much after the search dt.19.06.2009 after the land was converted to N.A. use and was plotted. It was pointed that the land in question viz. Khasra No.62/1 admeasuring 3.51 acres was purchased by sale deed executed and registered on **17.10.2007** for Rs.1,05,19,000/-. There was no material or evidence to assume any payment much less Rs.17,66,000/- made outside the books. Ld CIT(A) did not accept the said submission of the Assessee. According to him, the paper clearly shows amount actually paid and the same does not appear to be an estimate as claimed by the Assessee. Payment of Rs.1,22,85,000/- appears to have been made for the land being Khasra No.62/1 admeasuring 3.51 acres at Rs.35 Lakh

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per acre against the sale deed executed and registered on 17.10.2007
for Rs.1,05,19,000/- and in view thereof he confirmed the addition of
Rs.17,66,000/-.

20. Learned A.R. has reiterated the submissions made before A.O. and
Id. CIT(A) and has also filed a detailed written submission, copy whereof
was given to D.R. also. Same is placed on record. The Id. DR relied on
the orders of lower authorities. We have heard both the parties and
perused the materials available on record. We have perused the said
written submission filed by Id. A.R. we find substance in it. For ready
reference and completeness, we reproduce para 4 and 5 of the said
written submission.

"4] *Before C.I.T.(A) it was reiterated that the said paper did not refer to any final concluded transaction. It was in respect of discussion with a leading broker Shri Vivek Pathak in respect of proposed transactions of purchase of various lands stated therein, what would be the approximate cost of those lands, what would be approximate cost of conversion of land to N.A. use and other incidental expenses, what would be the ultimate cost per sq.ft. to the Assessee, what is the prevailing market price, how the Assessee would be benefited, advances made to said broker for going ahead with negotiation etc. It was explained that the said paper did not relate to any actual transaction but it was merely an estimate in respect of proposed/ongoing negotiation. This was conclusively established by Assessee by pointing out from the said paper itself that (1) In respect of Khasra No.54 admeasuring 2 Acres rate was stated at Rs.40,00,000/- and price amount at Rs.80,00,000/-. However actually the said plotted land was purchased by three saledeeds much after the date of search dt.19.06.2009 as under :-*

- (i) **Kh.No.54**, 26 plots by saledeed **dt.17.09.2013** for Rs.77
Lakh*
- (ii) **Kh. No.54**, 3 plots by saledeed **dt.30.05.2016** for Rs.15.15
Lakh*

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 (iii) **Kh.No.54**, 2 plots by saledeed **dt.30.05.2016** for Rs.13.60 Lakh.

Thus the same was purchased for Rs.105.75 Lakh, though the amount stated against the same was Rs.80 Lakh and that too the purchase was in the year 2013. The clearly showed that the said paper contained estimated price and did not contain the details of actual or final transaction. (2) Similarly referring to page 121 land being **Khasra No.60** against which rate per Acre was stated at Rs.38,00,000/- and the price/amount was stated at **Rs.94,62,000/-** the Assessee purchased only 36 plots being plot nos. 38 to 73 admeasuring 5877.91 sq.mt. out of said Khasra No.60 for **Rs.58.16 Lakh** and that too by saledeed **dt.30.05.2016**. (3) Similarly referring to the said page no.121 against land being Khasra No.56 rate is shown at Rs.35,00,000/- per Acre and the price/amount for 4 Acres is shown at Rs.1,40,00,000/-. However the same is **not purchased at all**. All these clearly showed that the said paper no.121 did not refer to the actual transaction. There was thus no basis to assume that the Assessee made payment of Rs.1,22,00,000/- for purchase of Khasra No.62/1 when the registered saledeed shows the consideration of Rs.1,05,19,000/-. Learned C.I.T.(A), however instead of referring to the whole paper in entirety and compare it with actual facts on record, merely referred to that portion of the letter where it refers to the words "Total payment" against Rs.4,38,00,000/- and on that basis assumed that Rs.1,22,85,000/- against Khasra No.62/1 means actual payment of purchase price. There is no basis for such an assumption. In the said paper 121 there is a reference to 'land issued' against Rs.4,37,50,000/- but as pointed out above that no actual or final transaction had taken place in respect of two lands and no deal at all in respect of the third land. Thus it is unreasonable to presume on the basis of said paper that the Assessee paid Rs.1,22,85,000/- to the Seller Shri Ramchandra Gangaram Shivankar from whom the Assessee purchased the said land by saledeed **dt.17.10.2007** for a consideration of Rs.1,05,19,000/-. Under the facts and material on record **the burden lay on the department first to establish that there was actual payment at Rs.17,66,000/- over and above the consideration of Rs.1,05,19,000/- stated in the registered saledeed**. A.O. cannot merely on the basis of surmises and conjecture draw untenable inference on the basis of said paper no.121. If A.O. had any doubt he should have examined the Seller Shri Ramchandra Gangaram Shivankar or should have examined his bank account or should have examined the broker Shri Vivek Pathak through whom the alleged payment is alleged to have been made or should have some material with him on the basis of which a man with ordinary prudence can draw an inference of some actual payment by Assessee over and above what is stated in the registered document. Merely on the basis of the said paper read as a whole no man with ordinary prudence can draw an inference that there was any extra payment of Rs.17,66,000/-

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by Assessee in respect of the said property purchased by Assessee by registered saledeed dt.17.10.2007 for a consideration of Rs.1,05,19,000/-. Further the Assessee had filed before the A.O. the copies of relevant accounts of said Shri Vivek Pathak, Assessee's account, account of Kirit Joshi, Spacewood etc. in respect of all the transactions in question and has established the correctness of all the transactions entered into by him. There is not an iota of any evidence to assume any payment by Assessee over and above what is stated in the registered saledeed.

- 5] *Apart from the merits of the case the addition of Rs.17,66,000/- made by A.O. in Assessment Year 2009-10 is illegal. This is because the saledeed in respect of which payment of Rs.17,66,000/- is alleged was executed and registered on **17.10.2007** which date falls in **A.Y.2008-09** (and not in A.Y.2009-10 as assumed by A.O. He wrongly assumed the date of saledeed as 14.10.2008) and hence addition made by A.O. in A.Y.2009-10 is illegal and not authorized by law. Secondly even the search took place on 19.06.2009 so even for the sake of argument considering the said date for making addition then also the same falls in **A.Y.2010-11** and not in A.Y.2009-10. Hence looking from any angle the addition of Rs.17,66,000/- in A.Y.2009-10 is illegal and is liable to be deleted on this ground also."*

21. Reading the said paper as a whole, it cannot be assumed that the said paper represents the actual payments. In respect of some of the fields, khasras the said property are not all purchased while some are purchased subsequent to the date of search and even at higher rate than stated in the said paper. Said paper itself does not prove that the Assessee has made investment of Rs.17,66,000/- outside the books, over and above the consideration of Rs.1,05,19,000/- stated in the registered sale deed dt.17.10.2007. In view thereof the addition of Rs.17,66,000/- is not sustainable. Apart from this fact the addition of Rs.17,66,000/- made by A.O. in A.Y.2009-10 is not legally justified. The sale deed is executed and registered on 17.10.2007 and not 14.10.2008

Shri Vivek M Deshpande vs DCIT, Central Circle1(3), Nagpur as assumed by A.O. The said date falls in financial year 2007-08 relevant to A.Y.2008-09 and hence the addition of Rs.17,66,000/- in A.Y.2009-10 is clearly unjustified and not legal. Even considering the date of search dt.19.06.2009, it falls in F.Y.2009-10 relevant to A.Y.2010-11. Hence in any event the addition of Rs.17,66,000/- in A.Y.2009-10 is wholly unjustified both on facts and in law. **In view thereof the addition of Rs.17,66,000/- made in A.Y.2009-10 is hereby deleted.**

22.0 In the result, the appeals of **the assessee for the assessment years 2004-05, 2005-06 & 2009-10 are allowed and that of A.Y. 2006-07 is partly allowed.**

Order pronounced in the Open Court on 28th April, 2022

Sd/-

(ARUN KHODPIA)
Accountant Member

Sd/-

(SANDEEP GOSAIN)
Judicial Member

Nagpur

Dated:- 28 /04/2022

*Mishra

Copy of the order forwarded to:

1. The Appellant- Shri Vivek M Deshpande, Nagpur
2. The Respondent- The DCIT, Central Circle-3, Nagpur
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 01 to 04/Nag/2017)

By order,

Sr. Private Secretary